IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 602 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MOTISING RATANSING SIKLIGAR - Appellant

Versus

STATE OF GUJARAT - Opponent

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Appearance :
MR BS SUPEHIA for Appellant.
MR KT DAVE, APP for Opponent.
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 15/02/2007
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. Challenge in this Appeal filed under Section 374 of the Code of Criminal Procedure ("the Code" for short) is to the correctness of the judgment and order dated 02.05.2003 rendered in Sessions Case No.209 of 2002 by the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod, by which the appellant – Motising Ratansing Sikligar ("the accused" for short) has been convicted for commission of the offence punishable under Section 376 & 506 (2) of the Indian Penal Code ("IPC" for short) and sentenced to suffer RI for 10 years and fine of Rs.1,000/- and in default thereof, SI for 3 months for the offence punishable

under Section 376 of IPC and RI for 2 years and fine of Rs. 500/- and in default thereof, SI for 15 days for the offence punishable under Section 506 (2) of the IPC. Both the substantive sentences were ordered to run concurrently.

2. Since the facts of the case have been detailed in the judgment of the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod, it is not necessary for us to repeat the same all over again in verbatim and in detail in this judgment. However, the basic facts which are necessary to be discussed in this appeal are as under:-

3. P.W. 7 - the victim prosecutrix has been residing at Baug. Her grandmother Shantabai and her mother Sushila have been residing at Baroda. She was at her home with her husband Nanaksinh S/o. Sajjansinh Sikligar at Baug prior to filing of the complaint on 26.04.2002. The complainant's step-

father - Motising Ratansing Sikligar, the accused, resident of Datigam came there and told to the persons of her in-laws that he wanted to take the complainant to meet her mother and also told her to come along with him. On his request, the complainant's husband and mother-in-law as well as father-in-law sent the complainant along with him. The accused took the complainant and her two little children on scooter from Baug to Dahod. The accused took the complainant in the lodge nearby Bus stand at Dahod. In the lodge, the accused committed rape on the complainant forcefully. When the complainant tried to shout, he threatened her and told her to keep quite otherwise he will kill her and her two children. He also told her to kill her with the knife kept in his neck. The accused committed an immortal act of rape with the complainant in Dahod. In the morning, the accused told her not to tell anything to anybody otherwise he would kill her. The accused dropped her at her mother's and grandmother's house at Baroda. The complainant told this fact to her mother Sushilaben

there. The mother of the complainant informed about this incident to the persons of the complainant's in-laws at Baug. The complainant's husband Nanaksinh took her at Baug. At that time, the complainant told about this incident to him at Baug. She went with her husband to file a complaint at Baug. However, the same was not taken. Thereafter, she went with her mother Sushila, mother-in-law Ranubai and Aunt-in-law Rankunvar to make a report and there she filed a complaint on 26.04.2002 with the Dhar Police Station.

4. A Complaint for the aforesaid incident was lodged by PW-7 which was reduced into writing as per the narrations given by PW-7 and beneath the same, her signature was obtained. The said complaint is on record at Exh. 18. Since the incident was taken place in Gujarat, a complaint registered at Dhar Police Station was transferred to Dahod Police Station. Panchnama of the scene of offence was drawn. Statements of the witnesses were recorded.

Clothes of the prosecturix as well as accused were recovered and sent for FSL for chemical analysis.

5. On receipt of the report from FSL, as sufficient incriminating evidence was found against the accused for commission of the offence of committing rape with the prosecutrix, a charge-sheet was filed against the accused for commission of offence punishable under Section 376 & 506 (2) of IPC in the Court of learned Judicial Magistrate First Class at Dahod.

6. As the offence under Section 376 & 506 (2) of IPC is exclusively triable by the Court of Sessions, the learned JMFC, Dahod committed the case to the Sessions Court, Panchmahals at Dahod.

7. The learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod to whom the case was made over for trial, framed

charge against the accused for commission of the offence punishable under Section 376 & 506 (2) of IPC. The charge was read over and explained to the accused. As the accused pleaded not guilty to the charge, he was put to trial and tried by the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod in Sessions Case No. 209 of 2002.

8. In order to bring home the charge levelled against the accused, the prosecution has, in all, examined as many as 13 witnesses, the details of which have been given in paragraph 5 of the impugned judgment and order and the same are as under :-

Sr. No.	Exh. No.	Particulars	Page Nos.
01.	06	P.W. 1 – Sureshchandra Narpatlal Agrawal.	41-44
02.	08	P.W. 2 – Chaturbhuj Chirjilal Sharma.	51-54
03.	09	P.W. 3 – Pravinbhai Daulatram Popat.	55-58
04.	11	P.W. 4 – Trilok Rupnarayan Agrawal.	63-66

Sr. No.	Exh. No.	Particulars	Page Nos.
05.	14	P.W. 5 – Dr. Babulal Badriprasad Mittal.	75-78
06.	16	P.W. 6 – Narvatsinh Anopsinh.	81-82
07.	17	P.W. 7 – Prosecutrix	83-92
08.	19	P.W. 8 – Dr. Laxmi Shrinarayansing.	101-104
09.	21	P.W. 9 - Nanaksinh Sajjansinh Sikligar.	109-114
10.	22	P.W. 10 – Kanubhai Jivanbhai Tadvi.	115-118
11.	24	P.W. 11 – Ravikumar Rajendrabhai Chauhan.	125-128
12.	26	P.W. 12 – Abdul Majid Ilahibaksh Shaikh.	133-136
13.	27	P.W. 13 – Maheshkumar Jayantilal Badmaliya.	137-139

9. To prove the culpability of the accused, the prosecution has also produced number of documents and relied upon the contents of the same, details of which, enumerated in paragraph 6 of the impugned judgment and order, are as under :-

Sr. No.	Exh. No.	Type of Evidence	Page Nos.
01.	3	Charge.	25-28
02.	07	Panchnama	45-50
03.	10	Panchnama	59-62
04.	12	Copy of register	67-72
05.	15	Medical Certificate of accused.	79-80
06.	18	Original complaint	93-100
07.	20	Medical Certificate	105-108

Sr. No.	Exh. No.	Type of Evidence	Page Nos.
08.	23	Panchnama	119-124
09.	25	Panchnama	129-132
10.	28	Consent letter	141-142
11.	29	Letter for Muddamal	143-148
12.	30	FSL Report	149-156
13.	31	Serological Report	157-158

10. After recording of the evidence of the prosecution witnesses was over, the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod, explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement, as required under Section 313 of the Code. In his further statement, the accused denied the case of the prosecution in its entirety and submitted that he has been falsely implicated in the offence alleged against him. However, he did not lead any evidence nor did he examine any witness in support of his defence.

11. On appreciation, evaluation, analysis and scrutiny of

the evidence, the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod came to the conclusion that the accused has committed an offence punishable under Section 376 & 506 (2) of IPC. On the basis of the said finding, the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod has convicted the accused for commission of the offence punishable under Section 376 IPC and sentenced him to suffer RI of 10 years and fine of Rs.1,000/- and in default of payment of fine, SI for 3 months, and also awarded sentence of R.I. of 2 years with fine of Rs.500/- and in default thereof, S.I. of 15 days under Section 506 (2) of IPC, which has given rise to the instant appeal at the instance of the accused.

12. Mr. B.S. Supehia, learned advocate appearing for the accused has taken us through the oral as well as documentary evidence which are on record and also assailed the judgment and order of the learned Joint

District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod. He has further submitted that the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod has erred in convicting the accused though there was no cogent or adequate evidence showing his guilt in the matter. He has further submitted that the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod has failed to appreciate that the appellant is innocent and has not committed the alleged offence. He has further submitted that the evidence pressed into service by the prosecution is untrustworthy, unreliable and can never form basis of conviction.

13. Mr. Supehia has further submitted that the alleged offence is said to have been committed on 25.03.2002 whereas the complaint is filed against the accused on 26.04.2002 i.e. after one month. No plausible explanation has come from the prosecution

as to why the complaint was filed so late. In view of the settled legal position, Mr. Supehia has submitted that belated complaint filed without any plausible explanation should render the prosecution case unbelievable and no conviction can be based on such complaint. Mr. Supehia has further submitted that the prosecutrix was step daughter of the accused. He and his wife both have brought up the prosecutrix right from her childhood and they have also got her married. The accused cannot even dream of committing such offence. Since there were some disputes with the in-laws of the prosecutrix, a false complaint was filed against him and the prosecutrix was instigated to file the complaint against the accused. There are number of contradictions and improvements in the complaint as well as the deposition before the Court. The Medical report does not indicate that the alleged offence was committed by the accused. Even FSL Report does not support the case of the prosecution. In view of the fact that the prosecution has failed to prove the case against the accused, Mr. Supehia has strongly

urged that no other finding except the acquittal of the accused from the charges levelled against him would meet with the ends of justice.

14. Mr. K.T. Dave, learned Additional Public Prosecutor, on the other hand, has supported the order and judgment of the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod and submitted that the prosecution has established the charge levelled against the accused beyond any reasonable doubt. The documentary evidence on the record of the proceedings clearly establish the involvement, presence and role of the accused for the offences charged against him. He has further submitted that despite the fact that the prosectix's maternal uncle was residing at Dahod and despite the fact that she insisted to stay with the relative at Dahod, the accused insisted her to stay in the Guest House. This shows the conduct and intention of the accused. The accused has brought the prosecutrix from Dhar to Dahod on Motor cycle

despite the fact that other vehicles, namely, Train or Bus were available. The accused is earlier involved in more than six cases and also offence was registered against him under the Arms Act. Looking to the past history of the accused and looking to the evidence collected by the prosecution in the present case, it cannot be said that the accused is innocent and that the charge levelled against him has not been proved by the prosecution. He has further submitted that the accused was granted furlough leave and thereafter, he did not surrender himself to the jail authority. At present, the accused is absconding. This also shows that the order of conviction and sentence passed by the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod is not required to be interfered with.

15. We have considered the submissions advanced by the learned advocates appearing for the parties at length and perused the impugned judgment and

order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We have also gone through the entire testimonial collections. We have applied our mind to the judgment and order passed by the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod, convicting the accused for commission of the offence punishable under Section 376 IPC and sentencing him to suffer RI of 10 years and fine of Rs.1,000/- and in default of payment of fine, SI for 3 months, and also awarded sentence of R.I. of 2 years with fine of Rs.500/- and in default thereof, S.I. of 15 days under Section 506 (2) of IPC.

16. In order to find out whether the prosecution has established the charge against the accused beyond reasonable doubt and whether the learned Joint District and Additional Sessions Judge, 3rd Fast Track

Court, Panchmahals at Dahod has recorded a just and correct conclusion holding the accused guilty, we may first advert to the oral testimony of the prosecution witnesses.

A) P.W. 7 – Prosecutrix is examined at Exh. 17. She deposed that she was staying with her husband at Baug and her mother Sushila is staying at Vadodara. She further deposed that Motising Ratansing Sikligar is her stepfather. He came to Baug to take her to Vadodara. Instead of taking her to Vadodara, he took her to Dahod and stayed at Shri Agrasenji Guest House situated at Opp. S.T. Bus station. In the room, he committed rape on her and threatened her to kill with knife if she tells to anyone. On the next day, he took her to Vadodara to meet her mother. She admitted that she has not told about this incident to her mother. However, she filed complaint at Dhar Police Station in M.P. on 26.04.2002. She also withstood the test of cross-

examination.

B) P.W. 9 - Nanaksinh Sajjansinh Sikligar is examined at Exh. 21. He is the husband of the prosecutrix. He deposed that accused came to Baug to take his wife, the prosecutrix who is the stepfather of the accused. The accused told him that he was released from the jail after three years and hence, the prosecutrix's mother wanted to meet her. He further deposed that his mother-in-law has come to Dhar along with the prosecutrix after 15 days and at that time, she told him that her stepfather committed rape on her.

C) P.W. 4 - Trilok Rupnarayan Agrawal is examined at Exh. 11. He is the owner of Shri Agrasenji Guest House. From the register of guests maintained at the Guest House, he confirmed that Motising Ratansing Sikligar (accused) had come to his Guest House on 24.03.2002 along with one woman. They left the Guest House on 25.03.2002 at 10.15 p.m. The register was duly signed by Motising Ratansing

Sikligar.

D) If the above evidence of the prosecution witnesses is considered, it is undoubtedly established that the accused had come to the Guest House along with the prosecutrix and he committed rape on her. It is also established that the accused has given threat to the prosecutrix and told her that if she tells any one about this incident, he will kill her. From the evidence of P.W. 4 - Trilok Rupnarayan Agrawal along with the Guest House register, the presence of the accused along with the prosecutrix was established at the Guest House. It is true that panch witnesses and medical evidence do not support the case of the prosecution but the very fact that the complaint is filed after one month and medical check-up and FSL tests were made thereafter is sufficient to believe that such medical evidence or FSL test would not yield any positive result. Turning of witnesses as hostile would not affect the evidence of the prosecutrix as well as her husband as they are

of sterling quality and there is no reason for them to tell a lie or there is no reason for the Court to disbelieve the said evidence. Filing of complaint late by the prosecutrix is also explained as she was scared by her stepfather and safety and security of her two children was also at stake.

E) It is also important to note here that the accused has a criminal antecedence and various complaints were filed against him. It is true that he was acquitted in those cases. However, FIR was filed against him under the Arms Act and he was also arrested. Even after the order of conviction and sentence in respect of Sessions Case No. 209 of 2002 against which the present appeal is filed, the jail record indicates that he was granted furlough leave on 21.11.2006 and he was to surrender on 06.12.2006. However, he has not surrendered to the jail authorities and he is an absconder as on this day. This conduct of the accused leads us to accept the prosecution version which is, even otherwise based on sound evidence

and the learned Joint District & Additional Sessions Judge has also rightly convicted and sentenced him as indicated earlier. We, therefore, do not think it just and proper to interfere in the order passed by the learned Joint District & Additional Sessions Judge, Panchmahals at Dahod.

17. In view of the aforesaid evidence, according to this Court, the sole testimony of the prosecutrix herself is sufficient to establish the charge of rape against the accused. However, her oral testimony is corroborated by the evidence of her husband-Nanaksinh. The documentary evidence in the form of register of the Guest House which indicates the presence of the accused and the prosecutrix and also the conduct of the accused leaves no doubt that the prosecution has established the charge levelled against the accused for commission of rape on his step daughter. Therefore, it is not necessary for us to discuss the evidence of other witnesses examined by the prosecution.

18. On close scrutiny of the evidence on record, we find no infirmity in the findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod. We are in complete agreement with the said findings, ultimate conclusion and resultant order of conviction and sentence as according to us, no other conclusion is possible except the one reached by the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod on the facts and in the circumstances of the case.

19. No new argument is advanced. No new criticism is offered. No infirmity in the reasoning of the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod is pointed out. The evidence has been carefully analyzed and fully appreciated in the closely reasoned judgment with which we fully concur. We do not think it right to

invest more time in reiterating the same reasoning in our language or giving the same answers to the same criticism in our own words for the sake of brevity.

20. In the aforesaid view of the matter, according to us, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence passed by the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod.

21. On the wakeup of the aforesaid, we are not inclined to interfere with the judgment and order of conviction and sentence recorded by the learned Joint District and Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Dahod and hence, the appeal lacks merit and deserves to be dismissed.

22. Since the appeal is dismissed, we hereby direct the

jail authorities to make all attempts at their command to secure the presence of the appellant – accused in jail so that he shall serve out the remaining sentence.

23. For the foregoing reasons, we find no substance in this appeal and accordingly it is dismissed.

[A. M. KAPADIA, J.]

[K. A. PUJ, J.]

Savariya